(16,805.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 246.

LUCY T. DAVIS, MILLARD P. McCORMICK, AND VIRGINIA-ALABAMA COMPANY, PLAINTIFFS IN ERROR,

vs.

LOUIS COBLENS AND MARTIN LAUER.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 In the Court of Appeals of the District of Columbia.

LUCY T. DAVIS ET AL., Appellants,
vs.
LOUIS COBLENS and MARTIN LAUER. } No. 694.

Supreme Court of the District of Columbia.

LUCY T. DAVIS ET AL.
vs.
LOUIS COBLENS ET AL. } At Law. No. 38058.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Declaration.

Filed May 17, 1895.

In the Supreme Court of the District of Columbia, the 17th Day of May, 1895.

CHARLES M. N. LATIMER, LUCY T. DAVIS, William W. Boarman, Millard P. McCormick, and Virginia-Alabama Company, a Corporation, Plaintiffs,
vs.
LOUIS COBLENS and MARTIN LAUER, Trustees, Defendants. } Law. No. 38058.

The plaintiffs, Charles M. N. Latimer, Lucy T. Davis (who sues in respect of her sole and separate estate), William W. Boarman, Millard P. McCormick, and The Virginia-Alabama Company, a corporation organized under the laws of the State of Virginia, sue the defendants to recover the ninety-nine one-hundredths ($\frac{99}{100}$) undivided part of all of original lot numbered ten (10), in square numbered ten hundred and thirty-one (1,031), situate in the city of Washington, District of Columbia, in which plaintiffs claim an estate in fee-simple, and of which the plaintiffs were lawfully possessed on, to wit, the first day of March, 1895, when the defendants entered the same and unlawfully ejected the plaintiffs therefrom and unjustly detain the same from the plaintiffs.

2 And the plaintiffs claim the possession of said undivided part of said lot, with the improvements thereon and the appurtenances thereof, and the costs of this suit.

FRANKLIN H. MACKEY,
W. MOSBY WILLIAMS,
Attorneys for Plaintiffs.

Notice to Plead.

The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occuring after the day of the service hereof; otherwise judgment.

FRANKLIN H. MACKEY,
W. MOSBY WILLIAMS,
Attorneys for Plaintiffs.

Plea.

Filed October 8, 1895.

In the Supreme Court of the District of Columbia.

C. M. N. LATIMER ET AL.
vs.
LOUIS COBLENS ET AL. } No. 38058. At Law.

Plea.

The defendants, for plea to the plaintiffs' declaration, say they are not guilty as alleged.

J. J. DARLINGTON,
Attorney for Defendants.

I consent that the judgment in this case may be vacated and this plea filed.
Oct. 8, 1895.

FRANKLIN H. MACKEY,
Att'y for Pl'ffs.

Joinder of Issue.

Filed October 19, 1895.

In the Supreme Court of the District of Columbia, the 19th Day of October, 1895.

CHARLES M. N. LATIMER ET AL.
vs.
LOUIS COBLENS ET AL. } At Law. No. 38058.

The plaintiffs join issue with the defendants on plea filed herein.

W. MOSBY WILLIAMS AND
FRANKLIN H. MACKEY,
Attorneys for Plaintiffs.

Memorandum.

Jan'y 29, 1897.—Leave granted to amend declaration by striking out plaintiffs Charles M. N. Latimer and William W. Boarman; verdict for defendants.

FRIDAY, *February* 26, 1897.

Session resumed pursuant to adjournment, Mr. Justice Cole presiding.

* * * * * * *

CHARLES M. N. LATIMER, LUCY T. DAVIS, William W. Boarman, Millard P. McCormick, and Virginia-Alabama Company, a Corporation, Plaintiffs,
v.
LOUIS COBLENZ and MARTIN LAUER, Trustees, Def'ts.
} At Law. No. 38058.

This case coming on to be heard upon the plaintiffs' motion for a new trial and the same having been heard, it is considered that said motion be, and the same is hereby, overruled and judgment on verdict ordered. Therefore it is considered that the plaintiffs take nothing by their suit, and that the defendants go thereof without day and recover against the plaintiffs Lucy T. Davis, Millard P. McCormick, and Virginia-Alabama Company their costs of suit, to be taxed by the clerk, and have execution thereof.

Notice of Appeal.

Filed March 2, 1897.

In the Supreme Court of the District of Columbia.

CHARLES M. N. LATIMER ET AL.
vs.
LOUIS COBLENS, Trustee, ET AL.
} Law. No. 38058.

The clerk of said court will enter an appeal from the judgment rendered in the above-entitled case against the plaintiffs Millard P. McCormick, Lucy T. Davis, and The Virginia-Alabama Company and issue a writ of citation.

FRANKLIN H. MACKEY,
W. MOSBY WILLIAMS,
Attorneys for said Plaintiffs and Appellants.

4 In the Supreme Court of the District of Columbia.

LUCY T. DAVIS, MILLARD P. MCCORMICK, and Virginia-Alabama Company
vs.
LOUIS COBLENS and MARTIN LAUER, Trustees. } At Law. No. 38058.

The President of the United States to Louis Coblens and Martin Lauer, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 2d day of March, 1897, wherein Lucy T. Davis, Millard P. McCormick, and Virginia-Alabama Company are appellants and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 2d day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 2d day of March, 1897.

J. J. DARLINGTON,
Attorney for Appellee-.

Memorandum.

M'ch 9.—Appeal bond filed.

Memorandum.

Apr. 5, '97.—January term prolonged 30 days to settle bill of exceptions.

Supreme Court of the District of Columbia, May 5th, 1897.

CHARLES M. N. LATIMER ET AL., Pl'ffs,
v.
LOUIS COBLENZ, Trustee, ET AL., Def'ts. } At Law. No. 38058.

Now again come here the plaintiffs, by their attorneys, and tender to the court here their bill of exceptions taken during the trial of this case and pray that it may be duly signed, sealed, and made part of the record now for then, which is done accordingly.

5 *Bill of Exceptions.*

Filed May 5, 1897.

In the Supreme Court of the District of Columbia.

CHARLES M. N. LATIMER ET AL.
vs.
LOUIS COBLENS, Trustee, ET AL. } No. 38058. At Law. Doc. —.

Bill of exceptions.

Be it remembered that the above-entitled cause came on for trial on the 27th day of January, A. D. 1897, before Mr. Justice Cole and a jury, Messrs. Franklin H Mackey and W. Mosby Williams appearing on behalf of the plaintiffs and Messrs. W. H. Sholes and J. J. Darlington appearing on behalf of the defendants.

And thereupon, to maintain the issues on their part joined, the plaintiffs gave evidence tending to prove that on the division between the United States commissioners and the original proprietors lot 10, in square 1031, in the city of Washington, in the District of Columbia, was allotted in severalty and in fee to Abraham Young, who thereafter died intestate, seized thereof, and leaving a widow, now deceased, and as his only heirs-at-law his six children; that thereafter, by appropriate partition proceedings, partition of his lands between his said heirs was made, in which partition the said lot 10 was assigned to and the title thereof became duly vested in his son, Richard Young, who died July 30, 1860, leaving a last will and testament making certain specific bequests and devises, none of which included the said lot 10, and devising the residue of his estate to his widow, Matilda Young, for life, the remainder in fee to his children, Lucy A. M. Bevans, Tracenia Latimer, Sophronia Magruder, Elizabeth T. B. McCormick, and Brook W. Young; that the said Matilda Young, life tenant, died October 7, 1874; that the said Lucy A. M. Bevans was married to her husband, John T. Bevans, prior to the death of Richard Young and died in the year 1875, leaving her said husband, who is still living, and Mary O. Munday, James Bevans, William Brook Bevans, Frances Beavans, and Tracenia Bevans, and three grandchildren, namely, Roberta Baker Higgins, William Braddock, and John Braddock, her only heirs-at-law; that the said Tracenia Young, daughter of the said Richard, was married in his lifetime to Edwin Latimer and died November 15, 1879, leaving her said husband surviving her, who died April 20th, 1880; that she left two children, namely, Lucy T., who was married prior to the death of the said life tenant to Americus Davis, and Charles M. N. Latimer, as her only heirs-at-law; that Sophronia Young, daughter of the said Richard, married Richard Y. Magruder before the death of the said life tenant and died about the year 1880 or 1885, having survived her said husband and leaving her two children, namely, Ella, who married Samuel Cox in the lifetime of the said Sophronia, and Richard Y. Magruder, her only heirs-at-law; that Elizabeth

6 T. B. Young, daughter of the said Richard, was married in his lifetime to Alexander McCormick and died March 22, 1889, and that her husband died July 2, 1891, and that Brook W. Young, son of the said Richard Young, is still living.

Plaintiffs then offered in evidence a duly executed deed, dated December 30th, 1886, and duly recorded among the land records of the said District October 14th, 1887, from said Richard Y. Magruder and wife and said Ella M. Cox and husband to John H. Walter, conveying to him in fee all their right, title, and interest in any lands in the city of Washington, D. C., whereof said Richard Young had died seized; also a similar deed from said Charles M. N. Latimer *et ux.* and Lucy T. Davis *et vir*, dated February 28th, 1887, and recorded October 14th, 1887, in said land records and conveying in fee to said Walter all their right, title, and interest as in the deed just above recited, and also a deed of same date from Elizabeth T. B. McCormick and Alexander McCormick, her husband, duly recorded, conveying all their right, title, and interest in all real estate in the city of Washington to the plaintiff Millard P. McCormick in fee.

Also a similar deed from said Brook W. Young and wife, dated December 30th, 1886, and recorded among said land records October 14th, 1887, to said Millard P. McCormick, conveying to him in fee all their right, title, and interest to any lands in the city of Washington whereof said Richard Young died seized; also a deed, duly executed, from said Millard P. McCormick and wife to Bartow L. Walker, dated October 10th, 1887, and duly recorded, conveying to him in fee all of said McCormick's interest which was acquired by the deed next above recited; also a deed, duly executed, from said Bartow L. Walker and wife, dated October 13th, 1887, and duly recorded in said land records October 14th, 1887, conveying to said John H. Walter in fee an undivided one-half interest in and to the land acquired by the deed next above recited; also a deed, duly executed, from said John H. Walter, dated October 3rd, 1887, and duly recorded October 14th, 1887, in said land records, conveying in fee to said Bartow L. Walker an undivided one-half interest in the lands acquired by said Walter by the deeds above recited from Richard Y. Magruder and wife, Ella M. Cox *et vir*, Charles M. N. Latimer *et ux.*, and Lucy T. Davis *et vir*.

Plaintiffs then offered in evidence a duly executed deed, dated the 25th day of October, 1892, and duly recorded among said land records on November 17th, 1892, in Liber 1735, folio 478, from John H. Walter, unmarried, to Charles M. N. Latimer, Lucy T. Davis, Ella M. Cox, and Mary E. Magruder, conveying "the following-described land and premises, situate, lying and being in the District of Columbia and distinguished as all those lands and tenements which were conveyed by said Charles M. N. Latimer and wife and said Lucy T. Davis and husband to said John H. Walter, his heirs and assigns by deed dated the 28th day of February, A. D. 1887, and recorded October 14th, 1887, in Liber 1277 at folio 475 *et sequitur* of the land records of the District of Columbia; and also all

7 those lands and tenements which were conveyed by said Ella M. Cox and husband and by Richard Y. Magruder (now deceased) and his wife, the said Mary E. Magruder to said John H. Walker, his heirs and assigns, by deed dated December 30th, A. D. 1886 and recorded in Liber 1277 folio 472 *et sequitur* of said land records; also all those lands and tenements which were conveyed by Bartow L. Walker and wife to said John H. Walter, his heirs and assigns by deed dated October 13th, 1887 and recorded October 14th, 1887, in Liber 1277, folio 487, of said land records, save and excepting from this conveyance hereby made so much of Brook W. Young's former interest in the land embraced by said last-mentioned deed as came to his father Richard Young in any other way than by direct inheritance from said Richard's father Abraham Young and also excepting all the interest which said Brook W. Young had in the lands of which Elizabeth Wheeler and John Young died seized and further saving and excepting from this conveyance so much of all the land and tenements above mentioned as had been conveyed by the party of the first part to other persons prior to the filing of the bill in equity cause 11637 (Cox *vs.* Walter) of the supreme court of the District of Columbia and excepting also all real estate released from the operation of said cause. This conveyance however, including all the right, title and interest of the party of the first part in the lands and tenements which by the decree in equity cause 10826 (Walter *et al. v.* Bevans *et al.*) of said court were vested in said Walter and one Guion Miller upon the trusts in said decree declared, so far as the said Walter is in his own right a beneficiary of said trust (it not being the meaning of this conveyance to convey the title held by him as trustee) excepting such of said real estate as has been released from the operation of said equity cause, 11637, together with — and singular the improvements, ways," etc.

Also a deed from Bartow L. Walker, dated November 1st, 1894, and recorded among said land records on December 11th, 1894, to Paul J. Brandt, conveying to him all said Walker's right, title, and interest in and to all real estate situate in the District of Columbia; also a deed from said Paul J. Brandt, unmarried, to the Virginia-Alabama Company, dated December 29th, 1894, and duly recorded among said land records on December 29th, 1894, conveying to said company, in fee, all of said Brandt's interest in all real estate in the District of Columbia, and then offered evidence tending to prove the incorporation, on the 18th day of December, 1894, under the general incorporation laws of the State of Virginia, of the said Virginia-Alabama Company, one of the plaintiffs in this cause, with authority, among other things, "to acquire, hold, own, and dispose of real estate in fee-simple and less estates, including equities and undivided interests therein, by grant, purchase, voluntary conveyance, sale, exchange, lease, and otherwise."

Thereupon FRANKLIN H. MACKEY, Esq., a witness produced on behalf of the plaintiffs, testified that he was counsel for the plaintiff in equity suit No. 11637, Samuel Cox *et al. vs.* John H. Walter

8 *et al.;* that he had represented the complainants ever since; that he entered no order in said cause releasing lot 10, in square No. 1031; and thereupon the said witness was asked on behalf of the plaintiffs the following question:

Q. Mr. Mackey, did you, as solicitor for the complainants in that cause, file releases of property?

To which question the defendants, by their counsel, objected on the ground that the record of the cause in question was the only competent proof of what releases were filed therein, and the court sustained the said objection; to which ruling of the court the plaintiffs then and there excepted.

And the plaintiffs thereupon offered in evidence the record of the proceedings in said equity cause No. 11637 for the purpose of showing that there was no release of lot 10, in square No. 1031; which record and proceedings tended to show that certain lots had been released, but that said lot 10 had not been released from the effect and operation of said cause.

Thereupon JOHN H. WALTER, a witness produced by and on behalf of the plaintiffs, testified in chief only that his name was John H. Walter, and that the deed from himself to Charles M. N. Latimer, Lucy T. Davis, Ella M. Cox, and Mary E. Magruder, dated October 25, 1892, was the only conveyance he ever made in reference to the said lot 10; whereupon, against the objection of the plaintiffs that said cross-examination was not responsive to the examination-in-chief and subject to their separate exception to each and every part of said cross-examination, the said witness was cross-examined, and testified that he had lived in the District of Columbia about thirteen years, during six or seven of which he had been in the real-estate business; that the deed conveying said lot 10 to him conveyed also about fifty other lots, and that he did not remember how many conveyances he had made with respect to these lots; that he had not reviewed his said conveyances recently; that he had probably made ten or a dozen deeds in reference to them, but never conveyed lot ten away except by the deed to Latimer, Magruder, Davis, and Cox, but, upon being interrogated in regard thereto, testified that he had conveyed a certain interest in that lot to B. L. Walker; that he remembered that deed well enough, but that he thought the question had reference to what he had done with his property since the suits were filed; that it would be impossible for him to tell how many deeds he had made of property which he had acquired by buying the title of heirs of men long since dead; that he had probably made fifty deeds; he did not think two hundred of them, but would not swear there were not two hundred; that the deeds to him and from him frequently included large quantities of property; it would be impossible for him to say how many lots; that his deeds from the alleged heirs of one George Walker and conveyances from him based upon said deeds probably included a hundred lots, parts of lots, or whole squares in the city of Washington, though he thought not so many as two hundred; that one of his deeds included the entire square of

9 ground containing St. Aloysius church, Gonzaga college, and some forty dwelling-houses; that he has never had any occasion to review the deeds made by him in these various matters, but he claimed to be able to say as to lot 10, out of all these lands or lots, that he had made no deeds affecting it other than those above mentioned.

The attorneys for the plaintiffs objecting that the foregoing is not a fair summary of the cross-examination of the witness Walter, at their request the whole of his cross-examination as it occurred and his redirect examination is hereto annexed, and each objection and exception made and taken thereto and the action of the court thereon is saved to the plaintiffs and made part of the record and of this bill of exceptions.

Cross-examination of JOHN H. WALTER.

By Mr. DARLINGTON:

Q. Mr. Walter, where do you live?

Objected to. Objection overruled and exception noted.

Q. Where do you reside?
A. I now reside at No. 616 9th street N. E.
Q. How long have you lived in Washington?
A. Twelve years.

Mr. MACKEY: I object to this line of examination as not responsive to the direct examination.

The COURT: The rule is that where a witness has been examined by a party who relies upon his evidence the other party in cross-examination may inquire into anything that may reasonably tend to throw light upon the weight that the jury may attach to the testimony of the witness. I think Mr. Darlington has the right to inquire into where this witness lives, and how long he has lived here, and who he is and what he is in order that the jury may know what sort of a man he is and what weight to attach to his testimony.

Mr. MACKEY: I note an exception.

By Mr. DARLINGTON:

Q. The question is, How long have you lived among us?
A. Some fourteen years, with the exception of about a year.
Q. What has been your occupation during that time?
A. I was a Government employee for a part of the time and in the real-estate business a portion of the time.
Q. What class of real-estate business?
A. I didn't know that the business was classed; that there were any classes in the real-estate business.
Q. Tell us what your real-estate business consisted in, if you do not understand the form of my question.
A. Buying and selling real estate.
Q. Buying what kind of titles, Mr. Walter?
A. That is for the title company to say, whether the titles were good.

10 Mr. MACKEY: I object to that question.
The COURT: I do not see that it has any materiality.

By Mr. DARLINGTON:

Q. You say you have never made any conveyance of lot 10, in square 1031?

Mr. WILLIAMS: He did not say that.

Q. Unless this deed here conveys it?
A. I made that deed, and that is the only one.
Q. You acquired the title that you have to that lot along with a great many other lots, did you not?

A. Objected to. Objection overruled and exception noted.

Q. There were a number of lots included in the deed.
Q. What deed do you refer to?
A. The deed conveying to me, in which this lot was included.
Q. The deed conveying this lot 10 to you?
A. Conveying the property in which that was included; yes, sir.
Q. You mean a deed to you?
A. Yes, sir.
Q. That conveyed quite a number of other lots?
A. Yes, sir.
Q. How many?

Objected to. Objection overruled and exception noted.

By Mr. DARLINGTON:

Q. There were a good many lots included in these deeds from the Young heirs to you—about how many?
A. I should say in the neighborhood of fifty.
Q. What have you done with those lots? How many conveyances have you made with respect to them?

Mr. MACKEY: I object to that.
The COURT: The last question would be proper, I think—how many conveyances he has made.
Mr. MACKEY: I simply want to keep the record straight. I note an exception.

A. The record will show. I really don't remember.
Q. Why not?
A. I really don't remember how many.
Q. You have not reviewed them recently?
A. What interest could I have in it now, after making that conveyance?
Q. My question is whether or not you have recently reviewed the deeds which you have made of various Young——
A. No, sir.
Q. You cannot give us any idea as to how many deeds you made in respect to those fifty lots?
A. I really don't know. I could make a guess; probably ten or a dozen.

11 Q. How are you able to say that lot 10 is not among some of those conveyances which you cannot remember?

Objected to. Objection overruled and exception noted.

A. I know that I never conveyed it.

Q. You are positive about that, are you?

A. I am positive about that.

Q. The only deed you ever made affecting this lot 10 is the deed to Latimer and Magruder and Davis and Cox?

A. I never conveyed it away, with that exception.

Q. Did you not make a deed to B. L. Walker for a half interest in all the property you had under the Young title?

Mr. WILLIAMS: I submit the witness ought to be shown the deed.

The COURT: Perhaps Mr. Walter remembers it well enough without being shown the deed.

A. I remember it well enough, your honor. I thought this question had reference to what I had done with this property since the suits were filed.

Mr. MACKEY: The question did have reference to that.

Mr. DARLINGTON: No; the question was whether he had made a deed to B. L. Walker for a half interest in all the property he had under the Young title.

A. I did make a deed to Bartow L. Walker for a certain interest in what I obtained through those deeds.

Q. You did not recall that when you said you had made no deed That was a slip of the memory?

A. I thought it had reference to the time since these suits.

Q. Why did you think that? There was nothing in the question that referred to the suits, was there?

A. That matter was all adjusted in that suit, Walker's interest and everything, and this particular deed referred to there was as to what interest remained in me; what I still held of that title. I thought that was the starting point.

Q. In this deed you except from it all property which you conveyed away to others?

A. All property which I conveyed away to others.

Q. There is no reference to any suit in the deed, is there?

A. No.

Mr. MACKEY: I object to this line of examination as not responsive to the examination-in-chief and as having no bearing on the issue.

The objection was overruled and an exception noted.

By Mr. DARLINGTON:

Q. You say your business has been buying and selling real estate. During how many years?

A. About six or seven years; something like that.

Q. Can you tell us approximately how many pieces of real estate you have made deeds to in that time?

12 A. I would be impossible.
Q. Why?

Objected to. Objection overruled and exception noted.

By Mr. DARLINGTON:

Q. Why is it you cannot remember about how many deeds you have made?

A. Because it has extended over a period of six or eight years; maybe longer than that—ten years. I conveyed a lot of property while I was in the Government office. I bought and sold property, dealt in property generally, while I was in Government office, for nine years, and since I have been out of the service I have made a good many deeds.

Q. About how many deeds of this character have you made?

A. I don't know what you have referred to.

Q. I mean where you bought the interest in property from heirs, as in this case—heirs of persons long since dead.

A. I never made any deed of this character that I know of.

Q. About how many deeds have you made of property which you acquired by buying the title of heirs of men who had been dead a long time?

Objected to. Objection overruled and exception noted.

A. It would be impossible for me to say. Really, I don't know.

Q. Is it because they have been so numerous?

A. Partly, and partly on account of the time.

Q. Can you come within a hundred of the number?

A. I presume I could.

Q. Come as near as you can to it. We do not hold you down to any exact number, but come with- a hundred of it, if you can.

A. Probably fifty. I really don't know. It is simply guessing.

Q. Fifty deeds?

A. Yes.

Q. Do you think you have not made over two hundred deeds within that time?

A. I hardly think so.

Q. Is your recollection on the subject such as to be able to swear that you have not made over two hundred deeds?

A. No; I wouldn't swear that I hadn't.

Q. Among all these deeds you have made you think you could remember distinctly that this deed here is the only one in which you conveyed lot 10?

A. With the exception, probably, of that to Walker. That is the only deed that I have made of the interest that I acquired after the suit involving the title to the property—the suit that was filed for straightening up the title to the property.

Mr. DARLINGTON: I would like to ask this witness something about his transactions in this property, how he came to undertake it, &c., but I presume I will not be permitted to do so.

The COURT: It does not seem to me that is proper.

13 By Mr. DARLINGTON:

Q. Mr. Walter, you not only made a good many deeds, but the deeds you have made have included a great many pieces of property, have they not—that is, a single deed would include large quantities of property, would it not?

The COURT: You mean a good many lots?
Mr. DARLINGTON: Yes.

A. Deeds that I have made?
Q. Yes; deeds to you and deeds from you have included large lots of ground, have they not?
A. Quite a number of pieces.
Q. I think you say in this case here that there were about fifty lots embraced in this deed?
A. In the neighborhood of fifty.
Q. Is this exceptional—that is, are there any other conveyances to you which included the same or a larger number of lots?

Objected to. Objection overruled and exception noted.

By Mr. DARLINGTON:

Q. Your conveyances in this property included many deeds which embraced large lots of ground, did they not?
A. I don't understand the question.

Objected to. Objection overruled and exception noted.

By Mr. DARLINGTON:

Q. My question is whether the deeds to you and from you, the deeds with which you have been concerned, have not, many of them, been deeds which conveyed a great many lots.
A. Some of them have.
Q. About how many lots altogether?
A. It would be impossible for me to say.
Q. Approximate it as near as you can.
A. It would be guessing on my part, and the record will show exactly how many lots I have conveyed.
Q. We have not time to go into the record. Is it not a fact that in the Walker deeds alone you have had conveyances to you and from you of more than a hundred squares and parts of squares in this city?

Objected to. Objection overruled and exception noted.

By Mr. DARLINGTON:

Q. You know what I mean by the Walker title, do you not, Mr. Walter—George Walker, who lived about eighty or ninety years ago here?
A. The record shows that such a man did live.
Q. I will ask you if in your transactions with that title alone there have not been lots, squares, and parts of lots and squares in this city deeded to you and many deeds from you again.

14 A. It has been quite a number of years since any deeds of that character were made to me. I have made deeds of it.

Q. These go back to 1886. Your transactions with the Walker title were since that time?

A. About that time.

Q. Is it not a fact that in that transaction alone there were some two or three hundred deeds of lots or parts of lots or whole squares in your name and conveyed by you away in this city?

A. I wouldn't think there was as many as 200; no, sir.

Q. How many? Approximate it as near as you can.

A. There may have been a hundred.

Q. You were also concerned with the Orr title, were you not?

A. Concerned with it?

Q. Yes; took deeds from it and made deeds of it.

A. I took some deeds from the heirs of Orr.

Q. Were there not many lots and parts of lots in single deeds made over to you in that instance?

A. There were a number of lots.

Q. One of these deeds was a deed of a whole square of ground containing St. Aloysius church, Gonzaga college, and some forty dwelling-houses, was it not?

A. Yes.

Q. Altogether can you approximate the number of squares and lots and parts of lots that you have bought up in this way and made deeds of?

A. I don't understand your question when you say bought it in this way. Please explain what you mean by "bought in this way."

Q. I mean like the Walker title, like the Young title, like the Orr title, and other claims of that sort.

A. All property that I bought I paid for.

Q. I am not asking as to that. I am asking as to the number of lots you have bought and made conveyances of under this kind of title.

A. I have already said it would be impossible for me to state the number without looking up the record.

Q. Can you come within two or three hundred of it? Can you say whether there were five hundred, eight hundred, or a thousand?

A. I shouldn't think it would be as many as two or three hundred.

Q. How long has it been since you reviewed your deeds in these various matters?

A. I haven't had occasion to review the deeds at all.

Q. Yet you claim to be able to pick out lot 10, out of all this mass of lots, and say you have not made a deed of it?

A. I say I have not.

15 Redirect examination.

By Mr. MACKEY:

Q. You are able to say that in respect to this particular Richard Young title that you never made any conveyance of lot 10 except that mentioned in this deed?

A. I have never made any conveyance of the interest that I acquired under the suit. In that case I acquired certain interests, and then a bill was filed to perfect the title, and by decree of the court certain lots were allotted to me, and, as to other lots, trustees, Mr. Miller and myself, were appointed to dispose of these lots. This was one of the lots that came to me in that division—came to Miller and myself as trustees—and since then I have never made any disposition of the lots, with the exception of that one deed. Previous to the filing of that suit, I will say, there were some conveyances made. B. L. Walker was my partner in the real-estate business, and a certain interest was conveyed to him, previous to the filing of that suit, for a partition of the lots. That is the reason I stated I never made any conveyance. I thought it had reference to my getting the whole title or the settlement under that suit, in which certain lots were allotted to myself and certain other lots to certain heirs. We didn't make any conveyances at all; but since that time the only conveyance I have made in reference to this lot is the conveyance referred to in the question first asked me.

Thereupon the plaintiffs further offered in evidence the original decree passed in the supreme court of the District of Columbia, holding a special term for equity business, in the cause entitled John H. Walter *et al. vs.* Tracenia Bevans *et al.*, equity, No. 10826. Among other things said decree contained the following:

"It appearing to the court that the time limited in the order *nisi* passed in this cause on the 21st day of March, 1888, has expired, and that no exceptions have been filed to the return of the commissioners to make partition, filed on said day, it is, this 4th day of April, 1888, adjudged, ordered, and decreed that said return and partition made by said commissioners be, and they are hereby, finally ratified and confirmed."

* * * * * * *

"And it appearing to the court from said return that the real estate described in paragraph 10 of the bill in said cause cannot be specifically divided among the parties interested without loss and injury to them, nor can the same be advantageously sold except as hereinafter stated, it is further adjudged, ordered, and decreed that John H. Walter and Guion Miller be, and they are hereby, appointed trustees, with authority to bring such suits as may be necessary to assert the rights of the parties to this cause in and to said real estate, to wit, original lot 9, square 1033; lots 5, 9, 10, and 12, in square 983; lot 10, square 1031; lots 4 to 13, square 1108; lots 8 and 9, square 1119; lots 5 and 6, square 1120, and lot 5, square 1122, in the said city and District; to make such public or private sales and effect such compromises and make such convey-

16 ances as may be approved by the court, and for these purposes the said trustees are vested with all the title of the parties to this cause in the said real estate last hereinbefore referred to, provided that before acting as such trustees the said Walter and Miller shall each file in this cause his separate bond to the United States of America in the penalty of two thousand dollars, conditioned in due form, for the faithful performance by said trustees of the trusts reposed in them by this decree or any further decree in this cause.

W. S. COX, *J.*"

* * * * * * *

Plaintiffs, for the purpose of showing that the defendants claimed title to the property in question from a common source of title, offered in evidence the records of certain deeds on file among the land records of the District of Columbia, the plaintiffs, however, denying that said deeds vested in the defendants or either of them any title to said lot as against the plaintiffs, and the plaintiffs reserved in said offer the right to impeach at the proper time any of said deeds. The deeds so offered in evidence were, first, a deed from Tench Ringgold, U. S. marshal, to Anthony Holmead, Jr., dated March 8, 1826, and recorded in Liber W. B. 16, folio 259, one of the land records of the District of Columbia, which said deed recited a judgment in favor of said Holmead against Richard Young on the first Monday in June, 1819; issuance of a writ of *fieri facias* thereunder February 28, 1820; levy and sale by the marshal of the said lot 10, square 1031, to the grantee, Anthony Holmead, Jr., on the 31st of July, 1820. This deed was followed by evidence of other deeds showing a consecutive chain of conveyances of said lot 10, square 1031, from said Anthony Holmead, Jr., of the title so acquired by him under said marshal's deed to the defendants in this case as trustees.

Plaintiffs then offered in evidence as a part of the aforegoing offer the record of a certain deed of trust upon said lot 10 and other property to secure the indebtedness therein recited from Richard Young to William A. Bradley, trustee, dated November 2, 1818, and recorded December 18, 1818, in Liber A. T., folio 331, one of the land records of the said District; which said trust recited, among other things:

"Witnesseth that whereas the said Richard Young now stands indebted unto James B. Holmead of the said city in the sum of seventeen hundred and ninety-two dollars current money and the said Richard Young is desirous of securing the punctual payment of the said debt with interest on or before the second day of November eighteen hundred and twenty in consideration whereof and of the sum of one dollar current money," etc.

Plaintiffs then rested.

Thereupon the defendants, to maintain the issues upon their part joined, produced as a witness on their behalf J. W. LATIMER, an employee of the clerk's office of the supreme court of the District of Columbia, who testified that he had direct charge of all of the

17 old papers relating to lawsuits, and that the original papers in the suit of Anthony Holmead *vs.* Richard Young, instituted at the June term, 1819, were lost, and after diligent search could not be found.

Whereupon, against the objection of the plaintiffs, overruled by the court, and subject to their exception, the defendants offered in evidence the docket entries of the late circuit court of the District of Columbia touching the said suit as tending to prove the recovery of a judgment in said cause of twelve hundred dollars, interest and costs; the issuance of a *fi. fa.*, levy, and partial satisfaction of the judgment by execution and sale.

Thereupon JOHN RIDOUT, Esq., called as a witness on behalf of the defendants, testified that he was a member of the bar, and that as such he had examined the original papers in said cause before they were lost, and that they showed levy upon the said lot 10, among other lots, under the *fi. fa.* in said cause. Said docket entries are as follows:

"*Imparlance, June Term*, 1819."

"Wallack. 698. P. P.	1818. Dec. 18.	Anthony Holmead *v.* Richard Young. 1065. *Fi. fa.*, June term, 1820. No. 79.	Case was three notes. Jas. B. Holmead spl'a. by order, rule — plea. Judgment by default for $1,200, with int.—on $400 with int. from 21 Nov., 1817; on 400 with int. from 21st Dec., 1817; on $400 with int. from 21 Jan'y, 1818. Protests, $5.10."

"*Judicials, June Term*, 1820."

Wallack. 79.	1820. Feb'y 28th	Anthony Holmead *v.* Richard Young. 698. Imps. June, 1819.	*Fi. fa.*; dams., $1,200; ints. on $400 from 21st Nov., 1817; on $400 — 21st Dec., 1817; on $400 from 21st January, 1818, are pd., &c. Costs, $11.74; add E. O. 91. Levied as per schedule & satisfied pl'tiffs to am't of $911.60, as per rect. on writ.

The defendants thereupon further offered evidence tending to prove that on March 8, 1875, Isaac P. Childs & grantee of the whole of square 1031 under a deed from Alexander R. Shepherd, bearing date the 22nd day of February, 1875, the same being one of the chain of conveyances offered in evidence by the plaintiffs as tending to show a common source of title, took possession of the whole of said square, converted it into a brick yard, and continued to hold and use it as such, openly, notoriously, exclusively, continuously, and in a manner hostile to all the world, until January, 1892, when he and his immediate grantees sold and conveyed the said square as an entirety to the defendants for sixty-seven thousand dollars, of

18 which thirty thousand was paid in cash and thirty-seven thousand dollars, deferred purchase-money, was secured upon the ground by a deed of trust, upon which the defendants have ever since paid the interest; that by the terms of the sale said Childs & Sons were to be allowed until February, 1893, to remove from said square; that they continued in occupation and possession of the whole of said square under said defendants, paying rent therefor down to the month of October, 1893, with the consent of said defendants, and that they held said square for some time after October without the consent of the defendants, but not disputing their title, being tenants holding over; that they removed the greater part of their effects from said square in the late fall or early winter of 1893–'4, but did not remove entirely until about the month of May, 1895; that the first structure placed by them on the square when they took possession in 1875 were two or more brick kilns erected on lot 10, and that these kilns were the last from which the brick were removed when they left; that these brick were in process of removal along during the winter of 1893–'94, and that a part of the machinery used by them in the making of brick, namely, two large rollers, with which the clay was crushed before being made into brick, were not removed until May, 1895; that these rollers and some machinery were hauled away in two four-horse wagons as late as about May 20, 1895; that the machine-house was located on the north part of lot 1, in said square, at or about a point indicated by the witness Charles Childs on a plat of the square exhibited to the jury, and that the rollers and machinery were north of the machine-house; and on cross-examination in regard thereto the said Charles Childs testified as follows:

"I don't know but what the rollers might have been on lot 10. The machine-house stood right in here (indicating), and the rollers might have been on lot 10."

The defendants further offered testimony tending to show that in November, 1893, the defendant caused four signs to be posted, each about four feet square, to the effect that the entire square was for sale or rent on application to them, one at each corner of the square, one of them being located on lot 10; that some of the old brick were left on the ground, which the witness thought Childs & Sons abandoned, but they did not charge defendants for them, which were suitable for use in building, and were still there; that defendants made no use of them, but that witness thought they would have used them if they had gone into building operations; that either in the latter part of March or the first part of April, 1894, the defendants rented the entire square to one John A. Downing, who rented it for the purpose of converting it into a base-ball park, but did not use it for that purpose; that he occupied the house which was on lot 7 for a dairy lunch and sublet a portion of said house for a barber shop; that the acts he did in reference to the occupation of the vacant ground in that square were as follows: That he prevented various parties from depositing tools, tool-boxes, and railroad iron on the square, though none was attempted to be deposited on lot 10; that on the said square there were a couple of

19 holes where the brick kilns had existed, and that there are the foundations of some kilns built of brick still there, and that the said Downing remained as such tenant in occupation of the said square, as aforesaid, until June, 1895, when he sold his dairy lunch to a Mrs. Schulz, who took possession the same day; that after Isaac Childs & Sons left the square, which was in the winter of 1893–'4, perhaps along in November, December, January, and February, they sold certain brick kilns, some of which were on lot 10, to James D. Childs, who in turn sold them to others, by whom they were taken away; that said James D. Childs did not claim the land said bricks were on; that Mrs. Schulz continued in occupation of the property from June, 1895, down to the time of the trial; that she rented the house with the privilege of using the entire square, provided she neither placed nor permitted others to place anything unlawful upon it, and that she had stopped parties from dumping earth upon the square and from driving across it, though she made no use of it herself.

The defendants thereupon produced as a witness in their behalf GOFF A. HALL, assistant assessor of the District of Columbia, who gave testimony tending to prove that he had examined the tax books from 1875 down to the time of the trial, and that throughout that period the taxes on said lot 10 had been assessed and paid in the name of the defendants and those under whom they claimed.

Thereupon the plaintiffs in rebuttal gave testimony tending to prove that the brick yard was established some time in the fall of the year 1875 and disappeared some time in 1893, leaving nothing remaining but the remnants of the old brick yard, and that the bricks were all removed from the kilns about March or April, 1894.

And thereupon, both sides having announced their testimony closed and the foregoing being all the evidence given by the respective parties, the plaintiffs, by their counsel, asked the court to instruct the jury as follows:

Instruction No. 1.

The jury are instructed that the uncontradicted evidence in this case shows that Childs entered in the possession of the lot in controversy not earlier than the eight- day of March, 1875, and continued in such possession until about November, 1893, when he vacated said lot and square 1031, having about a year previously made a deed of said lot to the defendants in this case, and that there is no testimony in this case that said lot 10 was in continuous occupancy of any one from the period of such vacation by Childs down to the seventh day of March, 1895, and therefore the defendants in this case have not shown such an adverse possession of said lot 10 by themselves and said Childs, under whom they claim, for the full period of twenty years, and their verdict must therefore be for the plaintiffs.

But the court refused to grant said instruction; to which ruling plaintiffs, by their counsel, before the case was given to the jury, then and there excepted and prayed the court to note their excep-

20 tion upon its minutes, and the same was done and made a part of this record.

Plaintiffs then asked the court for leave to amend their declaration in the following form:

"The plaintiffs hereby move the court for leave to amend their declaration by striking therefrom the following parties plaintiff: William W. Boarman and Charles M. N. Latimer;" which was by consent of counsel for defendants accordingly by the court allowed.

The plaintiffs then request- the court to instruct the jury as follows:

Instruction No. 2.

The jury are instructed that the plaintiffs have proven a *prima facie* record title to the lot in controversy down to the time of filing of their suit; and they — further instructed that in order to divest the plaintiffs of their said record title to said lot 10 the defendants in this case must show a continuous possession by themselves and Childs of said lot 10 for the full period of twenty years from the eight- day of March, 1875, and that such possession must not only have been continuous, but it must have been actual, exclusive, open and notorious, and hostile to the plaintiffs in this case for said period of twenty years; that if at any time during said twenty years said lot 10 was not in the actual occupancy, as stated, of Childs or some one claiming under him, then the defendants have not established such an adverse possession of the property, and there is no evidence in this case tending to show an adverse occupancy or possession by the defendants or their tenants from the time Childs vacated said lot 10 down to the seventh day of March, 1895, as the law requires, and they must find for the plaintiffs.

But the court refused to grant said instruction; to which ruling plaintiffs, by their counsel, and before the case was given to the jury, then and there excepted and prayed the court to note their exception upon its minutes, and the same was done and made part of this record.

The plaintiffs then requested the court to instruct the jury as follows:

Instruction No. 3.

The jury are instructed that the defendants in this case claim title with the plaintiffs from a common source, to wit, from Richard Young. The defendants are therefore not permitted to deny, nor can the jury find, that said Richard Young was not the owner of this lot 10 at the time of the marshal's deed to Holmead, and that the said deed of the marshal to Holmead is void and passed no title to Holmead or to any person claiming under him. As the defendants therefore claim under Richard Young, through said Holmead, their paper or record title is invalid, and the only title, if any, which they can show to this lot 10 is a title by adverse occupancy for the full and uninterrupted period of twenty years, as defined in instruction No. 2, and that there is no evidence in this case to show

21 such adverse occupancy for said twenty years, and that their verdict must therefore be for the plaintiffs.

But the court refused to grant said instruction; to which ruling plaintiffs, by their counsel, and before the case was given to the jury, then and there excepted and prayed the court to note their exception upon its minutes, and the same was done and made a part of this record.

Plaintiffs then requested the court to instruct the jury as follows:

Instruction No. 4.

The jury are instructed that no adverse possession of lot 10 has been shown against any of the plaintiffs who claim under Tracenia Latimer and Elizabeth T. B. McCormick, and their verdict must therefore be for the plaintiffs, at least as to the interests which they claim under those persons.

But the court refused to grant said instruction; to which ruling plaintiffs, by their counsel, and before the case was given to the jury, then and there excepted and prayed the court to note their exception upon its minutes, and the same was done and made a part of this record.

Plaintiffs then requested the court to instruct the jury as follows:

Instruction No. 5.

The jury are instructed that they cannot find that the machinery was on any part of lot ten from the testimony of a witness who says, "I don't know but what the rollers might have been on lot 10."

But the court refused to grant said instruction; to which ruling plaintiffs, by their counsel, and before the case was given to the jury, then and there excepted and prayed the court to note their exception upon its minutes, and the same was done and made a part of this record.

Plaintiffs then requested the court to instruct the jury as follows:

Instruction No. 6.

The jury are instructed that there is no testimony in this case tending to rebut the testimony of the witness John H. Walter that he never conveyed lot ten, in controversy in this case, to any person other than the conveyance by the deed to plaintiffs, Charles M. N. Latimer, Lucy T. Davis, and others, and the jury would not be justified in finding to the contrary."

But the court refused to grant said instruction as prayed, but modified it by striking out the words "and the jury would not be justified in finding to the contrary" and by adding in lieu thereof the words "and the weight to be given his testimony is a proper question for the jury." To which ruling of the court in refusing to grant said instruction as prayed the plaintiffs, by their counsel, and before the case was given to the jury, then and there excepted and prayed the court to note their exception upon its minutes, and the same was done and made a part of this record.

22 The court then instructed the jury as follows:

Charge to the Jury.

GENTLEMEN OF THE JURY: The instruction- which I have consented to grant on one side and the other, which will control your verdict, under the evidence as you may find it in the case, are as follows:

The one I now read you is granted in behalf of the plaintiff-:

The jury are instructed that the identity between the names Abraham Young mentioned in the allotment between the United States and one Abraham Young and the Abraham Young testified in this case as the father of Richard Young is *prima facie* evidence that they were the same person, and there is no testimony in this case tending to rebut that presumption, and the same is true in regard to the Richard Young testified in this case as being the ancestor of some of the plaintiffs and the Richard Young testified as being the son of said Abraham Young.

That goes to the identity of the parties from whom the title here is claimed to be derived by the plaintiffs.

The next instruction is also granted at the request of counsel for the plaintiff-:

The jury are instructed that there is no testimony in this case controverting the testimony that Abraham Young was the father of Richard Young and the other persons testified to as being the children of said Abraham Young, nor is there any testimony controverting the testimony of the plaintiffs that the said plaintiffs are the descendants of Richard Young or grantees of such descendants. The jury would therefore not be justified in finding to the contrary.

And the next instruction is also granted at the request of the plaintiffs:

The jury are instructed that there is no testimony in this case tending to rebut the testimony of the witness John H. Walter that he never conveyed lot ten, in controversy in this case, to any person other than the conveyance by the deed to plaintiffs, Charles M. N. Latimer, Lucy T. Davis, and others (and the weight to be given his testimony is a proper question for the jury).

The next instruction I give you is granted on behalf of the defendants, at the request of their counsel, and reads in this way:

(If the jury believe from the evidence that the defendants and those under whom they claim were in actual, exclusive, open, notorious, continuous, and hostile possession of the ground in controversy in this suit for twenty years before the institution of this suit, claiming it as their own, their verdict should be for the defendants.)

And the next is also given on behalf of the defendants:

(Unless the jury shall find that each of the plaintiffs, under the plaintiffs' declaration as amended, is entitled to recover, their verdict should be for the defendants.)

That is to say, gentlemen, if you should find some one of the plaintiffs was entitled to recover but others of the plaintiffs were not

23 entitled to recover, you could not find in favor of the plaintiff that is entitled to recover and for the defendants as to the other plaintiffs, but you would have to find a general verdict for the defendants.

The next instruction is granted on behalf of the plaintiffs, at the request of their counsel, and reads as follows:

The jury are instructed that no possession of any portion of square 1031 is an adverse possession against the plaintiffs in this suit unless such possession was actually extended to lot 10 for the full, uninterrupted period of twenty years prior to the institution of this suit.

Well, gentlemen, that concludes the series. As you will observe, the main question to be determined by you is this question of adverse possession, and the evidence is brief, and you will be able, I think, to come to a satisfactory conclusion from that.

Mr. MACKEY: I suppose both sides have the liberty of excepting to such portions of the charge——

The COURT: I have given no charge.

Mr. MACKEY: Well, the prayers and your modifications of any prayers.

The COURT: Oh, certainly.

And to so much of said charge as is contained in brackets the plaintiffs, by their counsel, then and there severally excepted and prayed the court to note the said exceptions upon its minutes, which was done, and the same are made a part of the record herein. Thereupon, the case being given to the jury, a verdict was rendered for the defendants, and after motion for a new trial, made by the plaintiffs within the time prescribed by rules of court, had been overruled, judgment was entered thereon according to the tenor of said verdict. Wherefore the plaintiffs, by their counsel, having now prayed the court to sign this their bill of exceptions, the same is accordingly done this fifth day of May, 1897, now for then.

CHAS. C. COLE,
Asso. Justice. [SEAL.]

Stipulation Extending Time to File Transcript 30 *Days.*

Filed May 7, 1897.

In the Supreme Court of the District of Columbia, May 6th, 1897.

CHAS. M. N. LATIMER ET AL.
vs.
LOUIS COBLENS, Trustee, ET AL. } Law. No. 38058.

It is hereby stipulated that the time for filing the transcript in this cause is to be considered as extended thirty days from this date.

FRANKLIN H. MACKEY,
W. MOSBY WILLIAMS,
Attorneys for Plaintiffs.
J. J. DARLINGTON,
For Appellee.

24 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 39, inclusive, are true copies of originals in cause No. 38058, at law, wherein Lucy T. Davis *et al.* are plaintiffs and Louis Coblens *et al.* are defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 25th day of May, A. D. 1897.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 694. Lucy T. Davis *et al.*, appellants, *vs.* Louis Coblens and Martin Lauer. Court of Appeals, District of Columbia. Filed Jun- 4, 1897. Robert Willett, clerk.

25 TUESDAY, *October 19th, A. D.* 1897.

LUCY T. DAVIS, MILLARD P. MCCORMICK, and VIRGINIA-Alabama Company, Appellants, *vs.* LOUIS COBLENS and MARTIN LAUER. } No. 694.

The argument in the above-entitled cause was commenced by Mr. F. H. Mackey, attorney for the appellants, and was continued by Mr. J. J. Darlington, attorney for the appellees, and was concluded by Mr. F. H. Mackey, attorney for the appellants.

26 *Opinion.*

LUCY T. DAVIS, MILLARD P. MCCORMICK, and VIRGINIA-Alabama Company, Appellants, *vs.* LOUIS COBLENS and MARTIN LAUER. } No. 694.

Mr. Justice SHEPARD delivered the opinion of the court:

1. This was an action of ejectment brought to recover the possession of part of lot 10 in block 1031 of the city of Washington, and the appellants, who were the plaintiffs below, appeal from a judgment against them. They claim as heirs-at-law and grantees of heirs-at-law of Richard Young, who is the common source of title. Defendants and their grantors claimed title under an execution sale upon a judgment against said Richard Young some time in the year 1826. The conveyance under that sale was a nullity because at the

time of the levy and sale the defendant in execution had but an equity of redemption in the lot. Van Ness *v.* Hyatt, 13 Pet., 294; Mayse *v.* Gaddis, 2 App. D. C., 20, 26. Consequently, defendants had to fall back upon a claim of title by adverse possession, upon the evidence of which the jury found for them.

The chief point of the contention is in respect of the sufficiency of this evidence to warrant its submission to the jury; but before considering that, several preliminary points require determination.

2. The first of these arises on an exception taken to the latitude of cross-examination permitted by the court of one of plaintiffs' witnesses. The title to a part of the lot in controversy had once been conveyed by some of the heirs of Richard Young to one John H. Walter, who had subsequently reconveyed to some of the plaintiffs. The deed was a general conveyance of lands and interest therein, including lot 10 aforesaid, by reference to another deed, and contained a clause, "saving and excepting from this conveyance so much of all the lands and tenements above mentioned as had been conveyed by the party of the first part (said Walter) to other persons prior to," &c.

Walter was offered as a witness to prove that lot 10 had not been conveyed by him to any one else. He testified from memory without having refreshed the same by an examination of the records. The cross-examination took a wide range in respect of the many conveyances the witness had made within a few years, and the plaintiffs objected thereto because it was not responsive to the examination-in-chief and was not relevant to the issues. The objection was overruled. The latitude to be indulged in the cross-examination of a witness for the purpose of testing his credibility varies with the particular circumstances of the case, and is like that in respect of leading questions, a matter necessarily very largely within the discretion of the trial court. Holtzman *v.* Douglass, 5 App. D. C., 405. The complaint here made is that the cross-examination was chiefly for the purpose of showing that the witness was a dealer in speculative titles, in order to prejudice the jury against him, and through him against the case of the plaintiffs. If such was the purpose, it would have been the duty of the court to repress it. But whilst we are inclined to think that the cross-examination went too far, we cannot say that there was an abuse of discretion in permitting it that would justify the reversal of the judgment. Besides, even if there had been error it would be immaterial. The case evidently turned upon the issue of adverse possession, and this witness did not testify in respect thereof at all. His testimony could have had no appreciable effect upon the result. W. & G. R. Co. *v.* McLane, 25 Wash. Law Rep., 485; Glenn *v.* Sumner, 132 U. S., 152, 157.

3. Another error is assigned on the modification of an instruction asked by plaintiffs in respect of the evidence given by the said witness, John H. Walter.

The instruction was, that as there was no testimony tending to rebut the evidence of the witness as to the fact that he had never conveyed lot 10 to any one before his deed to the plaintiffs, "the jury would not be justified in finding to the contrary." The court

struck out these last words, and substituted therefor the following: "The weight to be given his testimony is a proper question for the jury." Ordinarily, instructions singling out the evidence of a particular witness ought to be avoided. The court has no right to instruct the jury that they must believe an uncontradicted witness, notwithstanding it might be improper for them not to do so, under all the circumstances, and it was not error to inform them that the weight to be given his testimony was for their consideration, although it would have been better practice to refuse the charge as asked, and omit all reference to the witness. Met. R. Co. *v.* Jones, 1 App. D. C., 200, 207. For the same reasons given in discussing the exceptions taken to the cross-examination of the same witness, if error were conceded, the judgment would not be reversed therefor.

27

4. The next assignment of errors is founded upon the alleged insufficiency of the evidence of adverse possession, to warrant the submission of that question to the jury. No objection is taken to the charge on account of its form; but the contention is that the only instruction proper to be given was to find for the plaintiffs, as requested by them. The substance of that evidence is set out in the bill of exceptions as follows:

"The defendants thereupon further offered evidence tending to prove that on March 8, 1875, Isaac P. Childs and grantee of the whole of square 1031 under a deed from Alexander R. Shepherd, bearing date the 22d day of February, 1875, the same being one of the chain of conveyances offered in evidence by the plaintiffs as tending to show a common source of title, took possession of the whole of said square, converted it into a brick yard, and continued to hold and use it as such, openly, notoriously, exclusively, continuously, and in a manner hostile to all the world, until January, 1892, when he and his immediate grantees sold and conveyed the said square as an entirety to the defendants for sixty-seven thousand dollars, of which thirty thousand was paid in cash and thirty-seven thousand dollars, deferred purchase-money, was secured upon the ground by a deed of trust, upon which the defendants have ever since paid the interest; that by the terms of the sale said Childs & Sons were to be allowed until February, 1893, to remove from said square; that they continued in occupation and possession of the whole of said square under said defendants, paying rent therefor down to the month of October, 1893, with the consent of said defendants, and that they held said square for some time after October without the consent of the defendants, but not disputing their title, being tenants holding over; that they removed the greater part of their effects from said square in the late fall or early winter of 1893–'94, but did not remove entirely until about the month of May, 1895; that the first structure placed by them on the square when they took possession in 1875 were two or more brick kilns erected on lot 10, and that these kilns were the last from which the brick were removed when they left; that these brick were in process of removal along during the winter of 1893–'94, and that a part of the machinery used by them in the making of brick, namely, two large

rollers, with which the clay was crushed before being made into brick, were not removed until May, 1895; that these rollers and some machinery were hauled away in two four-horse wagons as late as about May 20, 1895; that the machine-house was located on the north part of lot 1, in said square, at or about a point indicated by the witness Charles Childs on a plat of the square exhibited to the jury, and that the rollers and machinery were north of the machine-house; and on cross-examination in regard thereto the said Charles Childs testified as follows:

"'I don't know but what the rollers might have been on lot 10. The machine-house stood right in here (indicating), and the rollers might have been on lot 10.'

"The defendants further offered testimony tending to show that in November, 1893, the defendant caused four signs to be posted, each about four feet square, to the effect that the entire square was for sale or rent on application to them, one at each corner of the square, one of them being located on lot 10; that some of the old brick were left on the ground, which the witness thought Childs & Sons abandoned, but they did not charge defendants for them, which were suitable for use in building, and were still there; that defendants made no use of them, but that witness thought they would have used them if they had gone into building operations; that either in the latter part of March or the first part of April, 1894, the defendants rented the entire square to one John A. Downing, who rented it for the purpose of converting it into a base-ball park, but did not use it for that purpose; that he occupied the house which was on lot 7 for a dairy lunch and sublet a portion of said house for a barber shop; that the acts he did in reference to the occupation of the vacant ground in that square were as follows: That he prevented various parties from depositing tools, tool-boxes, and railroad iron on the square, though none was attempted to be deposited on lot 10; that on the said square there were a couple of holes where the brick kilns had existed, and that there are the foundations of some kilns built of brick still there, and that the said Downing remained as such tenant in occupation of the said square, as aforesaid, until June, 1895, when he sold his dairy lunch to a Mrs. Schulz, who took possession the same day; that after Isaac Childs & Sons left the square, which was in the winter of 1893–'94, perhaps along in November, December, January, and February, they sold certain brick kilns, some of which were on lot 10, to James D. Childs, who in turn sold them to others, by whom they were taken away; that said James D. Childs did not claim the land said bricks were on; that Mrs. Schulz continued in occupation of the property from June, 1895, down to the time of the trial; that she rented the house with the privilege of using the entire square, provided she neither placed nor permitted others to place anything unlawful upon it, and that she had stopped parties from dumping earth upon the square and from driving across it, though she made no use of it herself.

"The defendants thereupon produced as a witness in their behalf GOFF A. HALL, assistant assessor of the District of Columbia, who

gave testimony tending to prove that he had examined the tax books from 1875 down to the time of the trial, and that throughout that period the taxes on said lot 10 had been assessed and paid in the name of the defendants and those under whom they claimed.

"Thereupon the plaintiffs in rebuttal gave testimony tending to prove that the brick yard was established some time in the fall of the year 1875 and disappeared some time in 1893, leaving nothing remaining but the remnants of the old brick yard, and that the bricks were all removed from the kilns about March or April, 1894."

In addition, it was shown that the defendants and those under whom they claimed had paid all the taxes assessed against the said lot 10 from year to year, since 1875. The testimony re-
28 quires no review. Though somewhat meagre as regards the last two of the required twenty years of adverse possession, we are of the opinion that, in connection with the proof of the regular payment of taxes by the defendants, the evidence was sufficient to warrant its submission to the jury. The case is not distinguishable from Holtzman *v.* Douglass, 5 App. D. C., 397, 412; S. C., Supreme Court U. S., November, 1897.

5. The next question, is: Conceding the proof of twenty years' adverse possession by defendants, could the statute of limitations be said to have run against the plaintiffs' title acquired through Tracenia Latimer and Elizabeth McCormick?

An instruction embodying a negative answer was refused as to both, and error is assigned thereon.

As we have seen above, defendants' adverse possession began on February 22, 1875. Richard Young, the common source of title, died July 30, 1860, leaving a will. After making certain specific devises, none of which included lot 10, he devised the residue of his estate to his widow Matilda for life, with remainder in fee to his five children, including the said Tracenia and Elizabeth. Both these were married at that time. Tracenia died November 15, 1879, and her husband, April 20, 1880. She left two children, one of whom is the plaintiff, Lucy T. Davis. Lucy Davis was married before the death of the life tenant, Matilda, which occurred October 7, 1874.

Elizabeth married before her father's death, and died March 22, 1889, leaving a husband, who died July 2, 1891. October 14, 1887, the said Elizabeth and her husband conveyed their interests to their son, the plaintiff, Millard P. McCormick. This suit was begun May 17, 1895.

(1) As the estates of Tracenia Latimer and Elizabeth McCormick vested before the passage of the act defining the separate property rights of married women, and permitting them to convey, devise and bequeath the same, and to contract, sue and be sued in matters having relation thereto, in the same manner as if unmarried (R. S. D. C., sections 727, 728, 729), their husbands' rights by the curtesy and their own disabilities in respect of the conveyance thereof, were not removed. Hitz *v.* Nat. Met. Bank, 111 U. S., 722, 729, 730; Hitz *v.* Jenks, 123 U. S., 297; Kaiser *v.* Stickney, 131 U. S., Appendix

CLXXXVII; Cammack *v.* Carpenter, 8 App. D. C., 219, 227; Frey *v.* Allen, 9 App. D. C., 400, 404.

Nor, for the same reason, could the wife have brought an action of ejectment in her own name, or without joinder of her husband. White *v.* Hilton, 2 Mackey, 339, 344.

It follows, therefore, that both of the married women aforesaid were within the provisions of the saving clause of the statute of limitations when the adverse possession of the defendants and those under whom they claim began. 21 Jac., 1, ch. 16, sec. 2; Compiled Stat. D. C., p. 359. sec. 2.

It is unimportant to consider whether the statute, thus suspended, began to run from the date of the death of the wife or from that of her surviving husband, for the result would be the same in either event. Nor is it material to consider the disabilities under which the heirs of each married woman may have labored at the time of descent cast, as there can be no tacking of one to the other.

(2) The right derived through Tracenia Latimer was unquestionably barred, because more than ten of the requisite twenty years of uninterrupted adverse possession had elapsed after the death of both her and her surviving husband. Had she survived her husband she would not have had twenty years from the time of the removal of her disability, within which to bring her action, but the ten years only provided in the saving clause of the statute. The rule of construction of that clause is, that if more than ten of the twenty years' adverse possession required to ripen into title shall remain unexpired at the time the disability ceases, there shall be no extension of the time in favor of the party beyond the said twenty years; but if the whole period of twenty years, or more than ten years thereof, shall have expired, then the party shall have the full ten years from the date of disability removed within which to commence action and prevent the bar. Demorest *v.* Wynkoop, 3 Johns. Ch., 129; Smith *v.* Burtis, 9 Johns., 174; Jackson *v.* Johnston, 5 Cow., 74.

(3) Under the foregoing rule, the right of the plaintiff, Millard McCormick, derived by conveyance from Elizabeth McCormick and her husband, was not barred at the time the suit was begun. Counting the statute as commencing to run at her death, or that of her husband, or at the date of the conveyance aforesaid, the ten years saved to her had not expired.

But this condition could not avail him in the action as brought. Having joined with the plaintiffs representing the claim of Tracenia Latimer, his right falls with theirs.

The rule is old and well established, that if one plaintiff in a joint action of ejectment cannot recover, his coplaintiffs cannot. Morris *v.* Wheat, 8 App. D. C., 379, 385; Hard as this rule may seem to be, it was followed in that case in obedience to the decision of the Supreme Court of the United States in Marsteller *v.* McLean, 7 Cranch, 156, 159. In that case Mr. Justice Story said:

"It seems to be a settled rule that all the plaintiffs in a suit must be competent to sue, otherwise the action cannot be supported;" and again: "When once the statute runs against one of two parties

entitled to a joint action, it operates as a bar to such joint action." See, also, Shipp *v.* Miller, 2 Wheat., 316, 324; Dickey *v.* Armstrong, 1 A. K. Marshall, 39, 40.

This was not only the settled rule then, but remained so for years in the majority of the States until changed by statutes regulating the practice in such cases. See cases cited in Morris *v.* Wheat, *supra*, p. 385; and in addition thereto Chandler *v.* Simmons, 97 Mass., 508; Kelley *v.* Meins, 135 Mass., 231, 235; Waterman *v.* Andrews, 14 R. I. 589, 599; May *v.* Slade, 24 Tex., 205, 207.

There has been no legislation affecting the rule of practice in the District of Columbia, and we do not consider it within our province to make a change therein.

29 The apparent hardship to this plaintiff might have been avoided by a separate suit on his own behalf.

The original rule at common law was that tenants in common could only sue separately because they were separately seized, and there was no privity of estate between them. Mobley *v.* Brunner, 59 Pa. St., 481; Corbin *v.* Cannon, 31 Miss., 570, 572; May *v.* Slade, 24 Tex., 205, 207; 4 Kent Com., 368.

The practice soon became general, however, in the United States to permit them to sue either jointly or severally as they might elect. 7 Enc. Pl. & Pr., 316, and cases cited. This seems to have been the practice in the District of Columbia, and, so far as we are advised, has never been questioned. Tenants in common may join in an action if they prefer to do so, but it is with the risk of the failure of all if one of them fail to make out a title or right to possession.

For the reasons given the judgment must be affirmed, with costs.

Affirmed.

30 TUESDAY, *January 4th, A. D.* 1898.

LUCY T. DAVIS, MILLARD P. MCCORMICK, and Virginia-Alabama Company, Appellants, *vs.* LOUIS COBLENS and MARTIN LAUER. } No. 694, January Term, 1898.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE SHEPARD.

January 4, 1898.

TUESDAY, *January 18th, A. D.* 1898.

LUCY T. DAVIS, MILLARD P. MCCORMICK, and VIRGINIA-Alabama Company, Appellants, *vs.* LOUIS COBLENS and MARTIN LAUER. } No. 694.

On motion of Mr. F. H. Mackey, attorney for the appellants in the above-entitled cause, it is ordered by the court that a writ of error

to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving bond in the sum of three hundred dollars.

31 Know all men by these presents that we, Lucy T. Davis, contracting in relation to her sole and separate estate, and Millard P. McCormick, as principals, and William F. Hellen, as surety, are held and firmly bound unto Louis Coblens and Martin Lauer, trustees, in the full and just sum of three hundred ($300) dollars, to be paid to the said Louis Coblens and Martin Lauer, trustees, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26 day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between said Lucy T. Davis and Millard P. McCormick, together with The Virginia-Alabama Company, as appellants, and the said Louis Coblens and Martin Lauer, trustees, as appellees, a judgment was rendered against the said Lucy T. Davis, Millard P. McCormick, and The Virginia-Alabama Company, and the said Lucy T. Davis, Millard P. McCormick, and The Virginia-Alabama Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said Louis Coblens and Martin Lauer, trustees, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington within 30 day from the date thereof:

Now, the condition of the above obligation is such that if the said Lucy T. Davis, Millard P. McCormick, and The Virginia-Alabama Company shall prosecute said writ of error to effect and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

LUCY T. DAVIS. [SEAL.]
MILLARD P. McCORMICK. [SEAL.]
WILLIAM F. HELLEN. [SEAL.]

Sealed and delivered in the presence of—
As to Millard P. McCormick:
FRED McKEE.

Financial sufficiency of this bond is conceded.
J. J. DARLINGTON,
Att'y for Defendants.

Approved by—
R. H. ALVEY,
Chief Justice Ct. App'ls.

[Endorsed:] No. 694. Lucy T. Davis *et al. vs.* Louis Coblens *et al.* Bond on writ of error to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Jan. 31, 1898. Robert Willett, clerk.

32 UNITED STATES OF AMERICA, 88:

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between Lucy T. Davis, Millard P. McCormick, and Virginia-Alabama Company, appellants, and Louis Coblens and Martin Lauer, appellees, a manifest error hath happened, to the great damage of the said appellants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 31st day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

33 UNITED STATES OF AMERICA, 88:

To Louis Coblens and Martin Lauer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Lucy T. Davis, Millard P. McCormick, and Virginia-Alabama Company are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 31st day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged.
J. J. DARLINGTON,
For Def'd'ts in Error.

34 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 33, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Lucy T. Davis, Millard P. McCormick, and Virginia-Alabama Company, appellants, *vs.* Louis Coblens and Martin Lauer, No. 694, January term, 1898, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 31st day of January, A. D. 1898.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,805. District of Columbia Court of Appeals. Term No., 246. Lucy T. Davis, Millard P. McCormick, and Virginia-Alabama Company, plaintiffs in error, *vs.* Louis Coblens and Martin Lauer. Filed February 21st, 1898.